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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF

AMENDMENT OF PART 21 OF
THE COMMISSION'S RULES
FOR DOMESTIC PUBLIC
FIXED RADIO SERVICES

CC DOCKET NO. 93-2

COMMENTS OF SOUTHWESTERN BELL CORPORATION

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March 16, 1993

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SUMMARY*

Southwestern Bell Corporation generally supports the Commission's proposed amendment to Part 21 of the Commission's Rules for Domestic Fixed Radio Services to allow construction of facilities for PPMS prior to Commission authorization. SBC also urges the Commission to allow pre-authorization operation of such facilities, noting that because frequency coordination is essential to the utilization of such facilities, little risk to the public interest would be created by such an extension of the Commission's proposal and significant benefits could be obtained. SBC generally supports the exceptions to pre-authorization construction and operation rights; however, the portions relating to FAA determination should be clarified. SBC also supports various revisions in the forms and consolidation of those forms to streamline the administrative process.

* All abbreviations used herein are referenced within the text.

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Amendment of Part 21 of) CC Docket No. 93-2
the Commission's Rules)
for Domestic Public)
Fixed Radio Services)

To: The Federal Communications Commission

COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC") submits these comments on behalf of itself and its subsidiaries in response to the Commission's Notice of Proposed Rulemaking (hereafter "NPRM") released February 9, 1993 in the above matter.

I. INTRODUCTION

In its NPRM, the Commission identified a number of goals with which SBC agrees. These goals include enhancing the prompt and efficient provision of Point-to-Point Microwave Radio Service ("PPMS") by allowing construction of facilities prior to authorization.¹ In identifying these rules, the Commission correctly points out that the public is demanding a wider range of microwave radio services and swifter delivery of these services utilizing PPMS.² In addition, the Commission correctly notes that

¹NPRM at Paragraph 1.

²NPRM at Paragraph 3.

other industries, including the cellular industry, often rely upon the utilization of PPMS facilities in the provision of cellular services.³ Similarly, local exchange companies are frequent users of PPMS facilities for long haul voice and data transmissions.

Southwestern Bell Mobile Systems ("SBMS"), an SBC subsidiary, is one of the nation's largest providers of cellular service and is licensed to provide cellular service in twenty-eight MSAs and twenty-nine RSAs. SBMS provides service to more than 1.4 million customers and extensively uses PPMS to provide these services. Another SBC subsidiary, Southwestern Bell Telephone Company ("SWBT"), is one of the largest local exchange service companies nationally, serving over 8 million customers in a five-state area. SWBT uses over 400 PPMS stations in this process. SBC and its subsidiaries fully support the Commission's goal of ensuring that all PPMS services are provided to the public in the most efficient, cost-effective manner possible.

Unfortunately, the Commission does not go far enough in its proposed Rules. The Commission proposes to authorize only the construction of facilities prior to authorization, but not the operation of these facilities.⁴ While SBC shares the Commission's concerns regarding

³NPRM at Paragraph 3.

⁴NPRM at Paragraph 14.

frequency coordination and the integrity of the PPMS facilities from the standpoint of interference, SBC believes that this integrity can be maintained while allowing pre-authorization operation as well. In addition, the Commission has sought comments on a number of general and miscellaneous items which SBC will address in these comments.

II. CONSTRUCTION OF PPMS FACILITIES PRIOR TO AUTHORIZATION
IS IN THE PUBLIC INTEREST

The Commission has tentatively concluded that pre-authorization construction of PPMS facilities is in the public interest.⁵ SBC vigorously supports this conclusion. As the Commission points out, PPMS applicants are required to complete full notice and response steps of prior frequency coordination procedures prior to filing the FCC Form 494.⁶ The FCC correctly points out that few frequency coordination conflicts arise among PPMS applicants, and those that have arisen generally have been resolved among the applicants themselves.⁷

As noted, SBC subsidiaries make extensive use of PPMS facilities in the provision of cellular and landline services. At this time SBMS currently has 392 PPMS authorizations in use in its cellular networks. In

⁵NPRM at Paragraph 5.

⁶NPRM at Paragraph 4.

⁷NPRM at Paragraph 4.

providing cellular services, SBMS operates more than 900 cell sites. Approximately forty-two percent (42%) of these cell sites utilize PPMS facilities to link the cell sites together, or to link the cell sites to the mobile switching center. Similarly, SWBT uses 400 PPMS stations to create its five-state network. Both SBMS and SWBT and comply with the Commission's Rules regarding prior frequency coordination in using these facilities,⁸ as do other PPMS applicants. Neither SWBT nor SBMS has ever found it necessary to request the Commission's intervention in a frequency dispute.

A number of the PPMS facilities operated by SBMS are located in markets with a high concentration of similar facilities operated by other entities (e.g., Dallas, Washington/Baltimore, Boston and Chicago). The same is true for SWBT, which operates in Dallas, Houston and other large metropolitan markets. The fact that SBC companies have not been forced to seek FCC coordination of frequencies places in doubt the conclusion reached by the Commission in this NPRM that these matters are not sufficiently routine to permit applicants to operate prior to the expiration of public notice and comment period.⁹

⁸ 47 C.F.R., Section 21.100(d).

⁹ NPRM at Paragraph 13.

A. The Commission's Proposed Pre-Authorization Construction Rules Will Serve the Public Interest.

Recognizing the need to provide prompt and efficient PPMS and other adjunct services such as cellular and other personal communications services, the Commission has proposed to allow construction to begin upon the filing of FCC Form 494.¹⁰ In reaching this conclusion, the Commission proposes that pre-construction be authorized unless certain prescribed events occur.¹¹ These conditions are an exact mirror of the pre-authorization construction rules, which have been in place since 1989, relating to cellular, public land mobile and other services.¹² The Commission established these pre-authorization construction rules in recognition of the speed at which wireless services are developing in the marketplace. The Commission has correctly concluded that its own rules should be modified where possible to enhance the ability of licensees to provide these services.¹³ These rules have served the public well in the telecommunications industry. The application of similar rules to PPMS applicants is equally

¹⁰NPRM at Paragraph 5.

¹¹NPRM at Paragraph 5.

¹²NPRM at Paragraph 6.

¹³Report and Order, 4 FCC Record, 5960 (1989), Amending Part 22 of the Commission's Rules to Allow Construction of Cellular and Other Facilities Prior to Authorization.

in the public interest, especially since the Commission still requires frequency coordination.

B. Pre-Authorization Construction Should be Allowed for Modification of Existing Facilities

In addition, the Commission has sought comments as to whether PPMS applicants seeking modification of existing licenses pursuant to Sections 21.40 and 21.41 of the Commission's Rules should be permitted to begin construction prior to the grant of modification, on the same terms as new construction discussed above.¹⁴ SBC fully supports this suggestion. The authority to construct, of course, will be subject to frequency coordination requirements relative to any changes contemplated in proposed modifications of the facilities.

C. Blanket Waivers of Eligibility Requirements Pursuant to Section 21.9 Should not Halt Pre-Authorization Construction Operation

The Commission proposes that PPMS applicants should not be permitted to engage in construction upon filing Form 494 in limited circumstances. One such exception is where the applicant requests a waiver of a Commission rule pursuant to Section 21.19 of its rules.¹⁵ In Docket No. ET 92-9, paragraph 20, page 9 (released February 7, 1992), Commission proposed blanket waivers of the eligibility requirements in the higher frequency bands

¹⁴NPRM at Paragraph 7.

¹⁵Paragraph 5(2) of the NPRM.

allocated to fixed microwave services for existing 2 GHz_z fixed microwave users for the purpose of accommodating PCS providers. While the pendency of non-routine waivers properly should delay construction and operation until their impact can be assessed, more routine waivers such as the blanket waivers contemplated in ET 92-9 should not slow the pace, since the safeguard of radio frequency coordination will have been completed prior to construction. Those who relocate pursuant to the Commission's PCS orders should not be penalized for having done so by being denied the pre-authorization construction rights afforded other applicants.

D. The Requirements Related to FAA Determination
Should be Clarified

Paragraph 5(4) of the NPRM proposes to deny pre-authorization construction if the applicant has not received a favorable determination by the FAA that the proposed antenna structure will pose no threat to aviation. SBC does not object to this requirement; the FAA determination usually is attached to the Form 494. The balance of the new rule, however, might be read to require an FCC determination on the same point. Since the FCC standards for structure are the same as those of the FAA and since the FCC specifies the required antenna structure marking and lighting requirements on the construction permit, no additional FCC determination is necessary and it should not be required.

III. PPMS FACILITIES SHOULD BE ALLOWED TO BE PLACED
IN OPERATION WITHOUT PRIOR AUTHORIZATION

While the Commission has properly recognized significant difficulties faced by the PPMS applicants in promptly constructing PPMS facilities, the Commission's proposed Rules do not allow PPMS applicants to operate these facilities without authorization. This limitation will not serve the public interest.

In reaching its conclusion that pre-authorization operation is inappropriate, the FCC states that coordination matters are not so routine as to permit applicants to go forward with operations prior to the expiration of a public notice and comment period or prior to the grant of an authorization.¹⁶ SBC respectfully disagrees with this conclusion, which is not supported by the past history of the PPMS licensing process. As noted earlier, SBC subsidiaries operate 792 PPMS facilities. Not once has an SBC subsidiary encountered frequency interference problems so severe as to require the intervention of the Commission. Indeed, few problems arise that require informal resolution, principally because prospective licensees such as SBMS and SWBT thoroughly investigate the possibility of interference with transmitting or receiving station prior to commencing construction. Such preliminary investigation is only

¹⁶ NPRM at Paragraph 13.

prudent because the facilities are expensive to construct and to realign to new frequencies. Additionally, PPMS applicants are still required to complete the full notice and response steps of the prior frequency coordination procedures prior to filing Form 494. SBC believes that its prior history in this regard is representative of the prior history of the rest of the industry as well.¹⁷

SBC fully supports the proposals submitted by McCaw in its Petition seeking revisions of Sections 21.707 and 21.708 as outlined in the NPRM.¹⁸ As the Commission has pointed out, the McCaw Petition proposed that Sections 21.707 and 21.708, which allow applicants to commence construction and operation for a period of less than six months upon at least five days notice to the Commission provided that prior frequency coordination is completed, be modified to permit PPMS applicants to use temporary authorization procedures to obtain permanent authorization for PPMS facilities.¹⁹ This proposal would allow PPMS applicants to commence construction and operation under

¹⁷ As noted, SBMS operates in a number of markets where there are extensive PPMS facilities in operation today. These markets include Dallas, Chicago, Washington/Baltimore and Boston. SBMS' experience in performing frequency coordination and construction of PPMS facilities in those markets without requiring the intervention of the FCC on interference problems is ample evidence of the integrity of the frequency coordination process that is in place today.

¹⁸ NPRM at Paragraph 11.

¹⁹ NPRM at Paragraph 11.

temporary authorization procedures requiring applicants to file FCC Form 494 within thirty days of the expiration of a six month period, or commence construction and operation upon filing the FCC Form 494.²⁰

The key element in this proposal is frequency coordination. The FCC is rightly concerned that the integrity of the existing frequency coordination process must not be damaged. SBC is likewise concerned that the frequency coordination process remain intact. AS SBC has pointed out, however, the frequency coordination process is robust enough to allow the construction of multiple PPMS facilities without encountering significant interference difficulties which would require the intervention of this Commission. The Commission should recognize the validity of this process and allow it to operate as fully and completely as possible.

The Commission is well aware of the phenomenal growth in the cellular industry. In addition to providing high quality service demanded by the public, this growth can be attributed to the speed and efficiency at which cellular networks have been constructed. This construction process becomes more and more complicated and demanding as the growth in customer demand increases.

²⁰ In either event, a PPMS applicant would notify the Commission that it was seeking permanent authorization at the expiration of the six (6) month period of temporary operations. (NPRM at Paragraph 11.)

The Commission has put into place rules which recognize the need for and allow the speedy construction and implementation of service from cellular facilities. The Commission currently authorizes implementation of service from cell sites which do not expand a system's CGSA upon the filing of an FCC Form 489.²¹ Indeed, service can be implemented from such a cell site upon the placing of that Form 489 in the mail to the FCC.²² This rule is evidence of the Commission's recognition of the need of the cellular carriers to provide prompt service to the public.

As more and more of these sites are interconnected using PPMS facilities, the public interest will not be served if cell sites can be constructed quickly, but they cannot be interconnected to one another or to the mobile switching center due to the delay in obtaining PPMS authorizations.²³ This is particularly true when the filing of the Form 494 and the pre-construction rules proposed herein require frequency coordination to take place. In that instance, the public interest is protected by the frequency coordination process. After all, it is

²¹ 47 C.F.R., Section 22.9(d).

²² 47 C.F.R., Section 22.9(d).

²³ The current backlog in processing Form 494s has created a delay of approximately one year between filing and approval. This delay would be highly detrimental to the public if the applicant were unable to operate while awaiting approval.

only the PPMS applicant who is at risk in pre-constructing and authorizing these facilities.

This conclusion is further supported by the Commission's recognition that petitions to deny may be filed in response to PPMS applications and filings.²⁴ Indeed, the Commission has pointed out that, when an applicant is served with a petition to deny, that applicant would be expected to halt pre-authorization construction until the petition is resolved.²⁵ This same rule could be applied to facilities which are placed into operation as well. It would be the applicant who would bear the risk of receiving this petition to deny and having to discontinue service. There is no greater incentive for a PPMS applicant to ensure that frequency coordination issues are resolved than the desire to avoid interrupting service to live customers due to a petition to deny. This "real world" marketplace incentive is the greatest protection which this Commission can offer to the public to ensure that interference problems do not arise.

The Commission has also requested comments on the elimination of Form 494-A.²⁶ This form is nothing more than notification to the FCC of the completion of construction. While the FCC should be vigilant in

²⁴ NPRM at Paragraphs 5 and 9.

²⁵ NPRM at Paragraph 9.

²⁶ NPRM at Paragraph 15.

preventing frequency "warehousing", the Commission has other enforcement mechanisms in place in its rules sufficient to ensure an applicant's timely construction of facilities. The industry itself can be relied upon to bring abuses to the attention of the Commission and to applicants. The Form 494A should be eliminated.

The Commission has also sought comments on the reduction of the construction period for PPMS conditional licenses from eighteen months to six months. As noted, most PPMS applicants promptly construct their facilities and, indeed, want to place them in service sooner rather than later. Unfortunately, construction can be delayed by factors beyond the control of the applicant, including local zoning requirements regulating when towers may be built. In those instances the Commission would not be well served by requiring the filing of requests for extensions in what can be routine matters. SBC would suggest that a twelve month construction period is more appropriate.

The Commission proposes to eliminate FCC Form 430 and the requirement that Part 21 applicants use FCC Form 430 to report licensee qualification information.²⁷ While SBC generally supports eliminating administrative reports wherever possible, the proposal as outlined would require the information contained on FCC Form 430 to be included on each Form 494 each time such an application is filed. This

²⁷ NPRM at Paragraph 18.

information can become somewhat voluminous. It would appear to be burdensome both to the Commission and to applicants to include licensee qualifications on every Form 494 as the rule change contemplates, rather than simply filing this information once a year as currently required. SBC believes that both the Commission and the PPMS applicants are better served by having a single annual Form 430 filing, rather than repeating that extensive information on every Form 494 that is submitted to the Commission. Accordingly, SBC opposes the elimination of the Form 430 filing requirement. At the very least, applicants should be given the option of filing a Form 430 annually or including that information on each Form 494.

IV. FORMS 702 AND 704 SHOULD BE COMBINED

The Commission proposes combining Forms 702 (application for Consent to Assignment of Radio Station Construction authorization or License) and Form 704 (application for Consent to Transfer of Control) into a new Form 705. SBC agrees that this change would streamline the process, eliminate duplication and reduce staff inquiries.

V. THE PROPOSED FORM 494 SHOULD BE MODIFIED

While the proposed modified Form 494 has a number of positive changes and additions, further changes would be beneficial both to the Commission and to PPMS applicants. For example, Form 155 should not be incorporated into Form 494. This adds an additional page to the form for fee

information which is presently reported on only one line in the existing Form 494. While the Form 155 information allows for the use of multiple fee type codes, SBMS has never had the occasion to utilize more than one fee code on a PPMS application. If SBMS' experience is similar to that of the other carriers, then the addition of an entire page to the form for the purpose of replacing information that is now provided on one line does not appear to be in the interest of the Commission or the applicants.

Items 8, 9, 10 and 11 in the proposed Form 494 should be expanded to allow up to eight lines of information for each of these items. This is necessary to allow sufficient space in cases where multiple paths are involved and where facilities are being added and/or deleted. This is particularly important in Item 10, relating to Transmitter Information, and Item 11, relating to Antenna Information, where multiple paths often utilize different equipment, different antennas and may involve diversity antennas. Adding additional lines for these items will help eliminate the requirement to attach multiple Form 494s to an application.

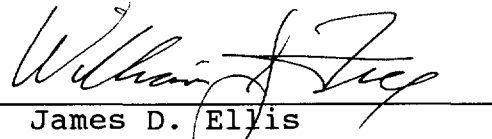
The proposed form at Item 12(c) requests a site name. If it is the same as the station name listed on Page 1 of the application, then it is unnecessary. If it requests different information, then the Commission should clarify what information is sought.

Item 29 as proposed should be modified as well. At the very least, the Commission should consider whether this information is required at all if Form 430's are to be left in place. In particular, if the Commission continues to allow Form 430 to be utilized, then the only information which should be requested in Item 29 is whether the Form 430 is on file. If, on the other hand, the Commission determines that the licensing qualification information should be included in this form, then the information requested should more closely resemble the Form 401, Schedule A, Page 2. In addition, if the Commission determines that it will continue to request licensing qualification in this format, then: 1) the reference to "Transferee" in Item 29(A) would be changed to "Applicant"; 2) Items 29(e) and (g)(2),(3),(5), and 6) concerning alien status could be combined into a single request; 3) Item 29(1)(1) is redundant to the certification statement and could be eliminated; and 4) Item 29(m) could be eliminated as being repetitious of Item 22. In addition, Item 30 could be eliminated if the Commission continues to allow the utilization of FCC Form 430.

VI. CONCLUSION

SBC fully supports the purpose behind the Notice of Proposed Rulemaking. SBC also supports the conclusion that PPMS applicants should be allowed to begin construction of PPMS facilities prior to authorization. We urge the Commission, however, to go the next step and allow the operation of these facilities on a prompt basis. Only through the operation of these facilities as outlined will the public interest truly be served.

Respectfully submitted,
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